

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

**FRANCISCO ESTACUY (deceased), LORENA NAVA ESTACUY, dependent spouse,
individually and as a guardian ad litem and trustee for minor child, LARA YAMELL
HERNANDEZ and GISELLE RAMIREZ NAVA, adult child, *Applicant***

vs.

**NELSON N. SOSA, an individual, LIVIER GOMEZ, an individual,
both dba SOSA SISTER'S DESIGNS, et al.,
uninsured; R. JACK BALTHAZAR, insured by EMPLOYERS ASSURANCE, *Defendants*
Adjudication Number: ADJ11160552
Los Angeles District Office**

**OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the Report and Recommendation on Petition for Reconsideration (Report) issued by the presiding workers' compensation administrative law judge (PWCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the PWCJ's Report, which we adopt and incorporate, we will deny the Petition for Reconsideration.

I.

We note that former Labor Code¹ section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
- (b)
 - (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

¹ All further statutory references are to the Labor Code, unless otherwise noted.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on June 1, 2026 and 60 days from the date of transmission is July 31, 2026. This decision is issued by or on July 31, 2026, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on June 1, 2026, and the case was transmitted to the Appeals Board on June 1, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on June 1, 2026.

II.

Defendant does not dispute the factual analysis related to the finding of joint employment by co-defendant R. Jack Balthazar, Inc., based on the factors outlined in the case of *S. G. Borello & Sons, Inc. v. Department of Industrial Relations (Borello)* (1989) 48 Cal.3d 341 [54 Cal.Comp.Cases 80]. Instead, defendant raises due process arguments which we find have no merit.

At trial on June 20, 2023 before WCJ Owensby, applicant presented two depositions of witness Niki de la Cueva: a May 9, 2019 “civil” deposition (Applicant’s Exhibit 43) and a May 1, 2020 workers’ compensation deposition (Applicant’s Exhibit 42), the latter was “**MARKED FOR IDENTIFICATION ONLY.**” (MOH, 6/20/23, at p 7:12-16.) The record reflects “that over the objection of defendant all of applicant’s Exhibits are ordered admitted into evidence with the exception of those marked for identification only.” (*Id.* at p. 7:23-25.) No additional record was created at that time regarding the basis for defendant’s objection or the reason why an objection was made as to the admissibility of the workers’ compensation deposition and not the civil one. There is no record that defendant requested a ruling on their objection by WCJ Owensby during the June 20, 2023 trial. On August 4, 2021, Applicant’s Exhibit 42 was admitted into evidence in EAMS.² Following that, there is no record of a Petition for Removal as to the admission of Exhibit 42 in EAMS. There is no record of a request for a ruling on the objection when the case came on calendar twice more before WCJ Owensby, or when the case was transferred to WCJ Cohen for multiple trials dates, or when the case was finally transferred to WCJ Dobrin for the conclusion of trial on March 24, 2026.

Based on this record, defendant waived the basis of any objection. “Under the doctrine of waiver, a party loses the right to appeal an issue caused by affirmative conduct or by failing to take the proper steps at trial to avoid or correct [an] error.” (*Telles Transport, Inc. v. Workers' Comp. Appeals Bd. (2001)* 92 Cal.App.4th 1159 [66 Cal. Comp. Cases 129].) “The purpose of the general doctrine of waiver ... is to encourage a party to bring errors to the attention of the trial court, so that they may be corrected or avoided and a fair trial had.” (*Keener v. Jeld-Wen, Inc.*, 46 Cal.4th 247, 264 citing *People v. Simon*, 25 Cal.4th 1082) “The law casts upon the party the duty of looking after his legal rights and of calling the judge’s attention to any infringement of them. If any other rule were to obtain, the party would in most cases be careful to be silent as to his objections until it would be too late to obviate them, and the result would be that few judgments would stand the test of an appeal.” (*Id.* at, pp. 264-265.)

Moreover, we emphasize that in workers’ compensation proceedings, the Labor Code makes explicit that the WCJ and the Appeals Board have *greater* discretion with respect to

² EAMS is an acronym for Electronic Adjudication Management System, which is the computerized system used by the Division of Workers’ Compensation (DWC) to store and maintain Appeals Board electronic case files. (See Cal. Code Regs., tit. 8, §§ 10269(p), 10215 et seq. 10301(p).)

evidentiary matters than courts in civil proceedings, and *not narrower* discretion as defendant appears to believe. Section 5708 mandates that we are not “bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the manner, through oral testimony and records, which is best calculated to *ascertain the substantial rights of the parties and carry out justly the spirit and provisions of this division.*” (Lab. Code, § 5708, emphasis added.) Section 5709 specifically allows informality in our proceedings and ensures that “admission into the record, and use as proof of any fact in dispute, of any evidence not admissible under the common law or statutory rules of evidence and procedure” will not invalidate an order, decision or award. (Lab. Code, § 5709; see also [*DiFusco v. Hands On Spa et al* \(2025\) 90 Cal.Comp.Cases 1007](#) (Appeals Board en banc).) The Workers’ Compensation Appeals Board (WCAB) is accorded generous flexibility by sections 5708 and 5709 to achieve substantial justice with relaxed rules of procedure and evidence. (*Barr v. Workers’ Compensation Appeals Bd.* (2008) 164 Cal.App.4th 173, 178 [73 Cal.Comp.Cases 763].) Defendant cites no controlling authority that would prevent the WCJ from considering the deposition transcripts of Niki de la Cueva, and Tara Pothoff, or any of the depositions submitted, for reasons other than impeachment purposes.

We agree with the factual analysis as laid out in the PWCJ’s report and note once again that defendant did not dispute that factual analysis in its Petition for Reconsideration. We further note that even assuming arguendo that another inference might be considered reasonable based on the record in this case, no Appeals Board decision may be annulled because it chose one of two competing inferences reasonably drawn from the evidence, “both of which are reasonable, the one sustaining and the other opposing the right to compensation.” (*State Employees’ Retirement System v. Industrial Acci. Com.* (1950) 97 Cal.App.2d 380, 382–383.) “The [Appeals Board] is...the body charged with the determination of issues of fact, and its findings of fact are not reviewable where they find support under any rational view of the evidence.” (*North Pacific S.S. Co. v. Industrial Acci. Com.* (1917) 174 Cal. 500, 502; see *Gage v. Workers’ Comp. Appeals Bd.* (2016) 6 Cal.App.5th 1128, 1135 citing *Western Growers Ins. Co. v. Workers’ Comp. Appeals Bd.* (1993) 16 Cal.App.4th 227, 233.)

Accordingly, we deny the Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 31, 2026

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

**LORENA NAVA ESTACUY, Guardian ad Litem
LARA YAMELL HERNANDEZ
GISELLE RAMIREZ NAVA
GUY LEVY LAW
LAW OFFICE OF RICHARD VILLASENOR
BLACK AND ROSE, LLP
OFFICE OF THE DIRECTOR – LEGAL UNIT (LOS ANGELES)**

PAG/cm

I certify that I affixed the official seal of the
Workers' Compensation Appeals Board to this
original decision on this date. *abs*

**REPORT AND
RECOMMENDATION ON
PETITION FOR
RECONSIDERATION**

I. INTRODUCTION

- 1. IDENTITY OF PETITIONER: EMPLOYERS COMPENSATION INS. CO. FOR SPECIAL EMPLOYER R JACK BALTHAZAR**
- 2. TIMELINESS:** Petition was timely filed.
- 3. VERIFICATION:** A verification is attached
- 4. PETITIONER'S CONTENTION(S):** The WCJ acted without or in excess of their powers; the evidence does not support the Findings of Fact.
- 5. EAMS FILE TRANSMITTED TO APPEALS BOARD ON JUNE 1, 2026**

II. PROCEDURAL POSTURE

The within Petition for Reconsideration has been timely filed and verified by co-Defendant R. Jack Balthazar, Inc. through their insurer Employers Compensation Insurance of the trial judge's Findings of Fact dated April 27, 2026. This case arises from a fatal truck accident that occurred on October 25, 2017, while the decedent was driving a truck from Southern California to Northern California along Interstate 5 in Kern County.

After multiple days of trial on the issue of employment, workers' compensation judge Daniel Dobrin made the following findings:

1. Francisco Estacuy, born [], while employed on October 25, 2017, as a truck driver/loader/unloader, at Kern County-Interstate 5 Northbound in California, claims to have sustained injury arising out of and in the course of employment due to a motor vehicle accident resulting in the death of Francisco Estacuy.
2. At the time of said claimed injury, the applicant was jointly and severally employed by each of the following individuals and/or entities:
 - a) Nelson N. Sosa dba Sosa Sister's Designs, who was uninsured on the date of claimed injury.
 - b) Livier Gomez dba Sosa Sister's Designs, who was uninsured on the date of the claimed injury,
 - c) R. Jack Balthazar, Inc. who was insured by Employers' Assurance on the date of the claimed injury.
3. There is no basis for awarding attorney's fees at this time.

The issue of dependency has been deferred by each trial judge assigned to this case since its inception, including the within Judge Dobrin's decision. Defendant R. Jack Balthazar, Inc. through its insurer Employer's Compensation Insurance has filed a timely, verified Petition for Reconsideration as indicated above. In addition, Employers Compensation Insurance Company has filed a Petition To Stay Proceedings. Judge Dobrin retired from the bench effective on May 3, 2026 and this Report and Recommendation is written by Presiding Judge Robert G. Rassp pursuant to Title 8 Cal. Code of Regulations, Sections 10346(b) and 10962.

This Presiding Judge has reviewed this case along with the trial judge's Opinion On Decision and recommends that the Appeals Board deny Defendant Employer's Compensation Insurance Petition for Reconsideration. In addition, Co-Defendants Nelson N. Sosa dba Sosa Sister's Designs and Livier Gomez dba Sosa Sister's Designs, both illegally uninsured, did not file a Petition for Reconsideration of Judge Dobrin's decision.

TRIAL JUDGE DOBRIN'S OPINION ON DECISION

The issues decided by Judge Dobrin was whether or not the Applicant decedent was an employee or independent contractor of the alleged employers and whether there was "joint employment" of the decedent by both entities Sisters Designs and their owners, and R. Balthazar, Inc.¹ Judge Dobrin issued the following relevant Opinion On Decision:

The sole contested issue at trial was as to who, if anyone, employed the applicant at the time Mr. Estacuy was involved in a fatal accident while driving a cargo vehicle from the Los Angeles area to San Francisco, said accident assertedly having been caused when Mr. Estacuy lost control of the vehicle after a front tire blowout.

Decedent, through counsel, asserted that each of three different individuals or entities noted above were the applicant's employers at the time of this accident. Having found that each of them were in fact joint and several employers, I will discuss the reasons for this, in sequence, as to each of these party defendants, after my summary of the relevant facts.

¹ The decedent left a widow and two stepchildren (who are now adults) as alleged dependents. The issue of dependency, if any, has been bifurcated at some point during the litigation of this matter. There were three trial judges in this case and unfortunately all three retired before this case could be tried in its entirety. The parties waived Labor Code Section 5700 when Judge Cohen retired and Judge Dobrin decided this case prior to his retirement on May 3, 2026.

The applicant had a long-time working relationship with a business known as Sosa Sister's Designs (hereinafter Sosa Sister's). Judging by the invoices placed in the trial record, Sosa Sister's Designs did a robust business by providing and, in most instances, installing and removing, decorative draping for a variety of events and galas in Southern and Northern California, some examples being the Oscar and Emmy awards.

The applicant functioned mainly as a fabric sewer and installer for Sosa Sister's but, at the time of the fatal injury, was functioning somewhat anomalously as a driver of a vehicle owned by a different company, R. Jack Balthazar, Inc. (hereinafter Balthazar), and containing, in its entirety, various items belonging to Balthazar to be used for a weekend event in San Francisco. Although no formal written agreement was ever prepared, Sosa Sister's had contracted or agreed with Balthazar that it would provide Balthazar, who functioned as overall "party planner" for this San Francisco event, certain draping materials for this event. Also, Sosa Sister's would be responsible for installing and removing these materials at the event, and possible other installation services as well.

In addition, for this specific event, Sosa Sister's had agreed it would provide cargo transportation to San Francisco, not only for Sosa Sister's own fabric items but also for a large number of furniture, audio-visual and other items that Balthazar, the overall party planner, was also bringing to the San Francisco event. Both Sosa Sister's and Balthazar ran their operations from facilities in the greater Los Angeles area.

Before this San Francisco event took place, the parties had believed that a single truck belonging to Sosa Sister's, plus a smaller van also belonging to Sosa Sister's, would be large enough to hold all the items that *both* companies were bringing to the San Francisco event. However, upon loading additional equipment at the Balthazar facility into the Sosa Sister's truck prior to the departure date, those involved realized there wouldn't be enough room in said Sosa Sister's truck to take all the items that *Balthazar* would need for the event. So, an agreement was reached as between defendant Nelson Sosa and Tara Potthoff, a Balthazar employee, that applicant herein, assertedly a Sosa Sister's employee, would drive an Isuzu cargo truck to San Francisco. This truck belonged to Balthazar and was filled entirely with items belonging to Balthazar.

The two companies had a long history of working together and, perhaps unsurprisingly, no formal written contract was ever prepared regarding the San Francisco event. It does appear there was an oral agreement between Mr. Sosa and Ms. Potthoff that Sosa Sister's would provide draping, installation services, and transportation services to Balthazar for a lump sum of \$3,000.00, which was in fact paid upon presentation of an invoice a month or so later. Apparently in the interest of goodwill and preserving a good relationship with a major client, Sosa Sister's did not ask to renegotiate when Ms. Potthoff made this new request for an additional driver from Mr. Sosa as part of the transportation services that Sosa Sister's agreed to provide.

According to Mr. Sosa, the applicant had been assigned to go to work at the San Francisco event even before Ms. Potthoff requested the additional driver. Mr. Sosa stated that he selected the applicant from among his existing crew as the Balthazar Isuzu truck driver because the applicant had had some truck driving experience in the applicant's country of origin. Mr. Sosa also believed the applicant had a proper Class C regular driver's license to do this task, as the Isuzu cargo truck belonging to Balthazar was not of sufficient size to require a commercial license. (See Exh. X, pp. 62-66.)

On the day of the fatal injury, the three vehicles, namely the Sosa Sister's truck, the Sosa Sister's van, and the Isuzu truck belonging to Balthazar, headed in a caravan to San Francisco along Interstate 5 through the San Joaquin Valley. Mr. Sosa drove the Sosa Sister's truck; the applicant drove Balthazar's Isuzu truck and a third individual, arguably another Sosa Sister's employee, drove the smaller Sosa Sister's van.

Sadly, while in transit, the Isuzu truck assertedly suffered a tire blowout causing the vehicle to veer across the entire freeway through a barbed wire fence and headlong into a dry irrigation canal. The applicant, per the police report, died at the scene of the accident due to the devastating collision. (See Exh. 1, Traffic Collision Report.)

Judge Dobrin then wrote in his Opinion On Decision specific findings of fact and determined the credibility of witnesses and specifically cited the record:

I do not believe it requires an extended legal disquisition to conclude that the applicant was directly employed by Mr. Sosa at the time of the fatal accident.

There is un rebutted evidence that Mr. Sosa specifically asked the applicant to perform the driving duties that led to his fatal accident. He had a standing agreement to pay the applicant \$17 per hour for his services. (Exh. X, p. 60.) A preponderance of evidence indicates that Mr. Sosa directed the driving route and made sure the drivers took their necessary breaks in compliance with the law. Mr. Sosa even made sure that the applicant had a logbook to present at any inspection stations. (Exh. X, pp. 41-42, 47, 68, 122-123.)

Mr. Sosa even testified that he unilaterally, at the last minute, changed the applicant's terms of engagement from someone who would primarily provide installation services at the event to someone who would primarily function as a driver with an accompanying reduction in the paid hours the decedent would have been entitled to earn at the event itself, as Mr. Sosa had to retain another individual for this purpose. (Exh. X, pp. 61-63.)

Clearly, the applicant was performing services on behalf of Mr. Sosa. Mr. Sosa did not ask the applicant to drive the Balthazar truck as a charitable mission but rather as part of Sosa Sister's perceived contractual obligation to provide transportation services as part of the \$3,000.00 payment Sosa Sister's was to receive for Sosa Sister's overall services at the event. To say that the applicant did not benefit Mr. Sosa because he was driving another

company's truck makes about as much sense as saying that the applicant's drapery services at the event itself would not benefit Mr. Sosa because Balthazar, not Sosa, was the actual party planner.

Accordingly, there is a presumption of employment favoring the applicant as against Mr. Sosa, unless Mr. Sosa can establish, by a preponderance of evidence, that the applicant was in fact functioning as an independent contractor. That leads us, of course, to the time-honored criteria of *S. G. Borello & Sons v. WCAB* (1989, Supreme Ct.) 54 CCC 80 to evaluate this defense.

The primary issue is the alleged employer's right of control, which was basically plenary on Mr. Sosa's part as described above. While the applicant allegedly had some unspecified prior experience driving large vehicles, the task at hand required no special licensing by Mr. Sosa's own admission. While there was vague hearsay testimony that the applicant functioned as a sewer for other companies, there was none suggesting that the applicant had a side business as a truck driver.

Other than a logbook bought at a gas station, the tools and equipment being used at the time were not the applicant's own but rather were selected by Mr. Sosa at the behest of Balthazar, Mr. Sosa's client. There is ample authority that working as a driver-deliverer is not of such a skilled nature as to indicate, by itself, status as an independent contractor. (See, e.g. *Ali v. Trimac Transportation*, 2014 Cal. Wrk. Comp. P.D. LEXIS 212; *Vasquez v. CEVA Freight*, 2014 Cal. Wrk. Comp. P.D. LEXIS 83.)

Mr. Sosa's business consisted of making, transporting and installing drapery and other fabric items at various special events. Transporting a client's items rather than Sosa Sister's items may or may not have been a common practice in connection with these events. However, the decedent's work was still part and parcel of the transportation requirements that would obviously accompany any of the special events where Sosa Sister's provided services.

Mr. Estacuy was paid hourly and the terms of his engagement were changed at the last minute at Mr. Sosa's request. There is no suggestion of any profit participation in the event by Mr. Estacuy or other opportunities to expand his alleged business as a truck driver.

Mr. Estacuy had had a longstanding relationship with Sosa Sister's, so much so that virtually every testifying witness from both Sosa Sister's and Balthazar was familiar with him. As for the ability to fire the applicant, Mr. Sosa's daughter, Nataly Orellana, testified that Mr. Sosa did in fact fire the decedent at some earlier time but brought him back later. (4/23/24 MOH page 11.)

While Mr. Sosa sought to characterize the applicant as an independent contractor, he was wont to drop his guard at times, explicitly describing the individuals who accompanied him

to San Francisco as “employees.” (Depo, pp. 89-90.) A signed nondisclosure agreement between the applicant and Sosa Sisters also repeatedly described the applicant as an employee. (Exh. 10.)

Mr. Sosa’s defense to employment status appeared to be two-fold. First, Mr. Sosa evidently believed that by calling the applicant an independent contractor and filing a 1099 form on his behalf, he could somehow make it so. However, like the proverbial creature who walks, talks and acts like a duck, there is almost nothing in the actual working relationship that would support this characterization both with regard to the applicant’s services on the date of the accident and with regard to the applicant’s longstanding services on behalf of Sosa Sister’s.

Mr. Sosa, like his live-in partner Livier Gomez, also sought to distance himself from any ownership status of the entity publicly known as Sosa Sister’s Design. This strategy of trying to convince the Board that the company somehow magically ran itself without any direction, control or profit participation by either of them, was entirely unconvincing. There was abundant testimony, including from Mr. Sosa himself, that he was deeply involved in the company’s business affairs, including negotiating contracts, paying employees, and directing the services that Sosa Sister’s provided at the various events that were the bread and butter of its business.

If in fact Mr. Sosa were an employee or independent contractor of Sosa Sister’s, it is reasonable to infer he would have presented a W-2 or 1099 form to support this in the same manner as he did for the applicant. Failing this, the only other inference that comes to mind other than ownership is that Mr. Sosa simply did all that he did for Sosa Sister’s out of the goodness of his heart without any expectation of profit or remuneration. Needless to say, that proposition strikes this judge as preposterous.

For the above reasons, I have no difficulty concluding that at the time of the fatal accident, the applicant was an employee of Nelson Sosa dba Sosa Sister’s Inc.

Whether or not Ms. Gomez aka Ms. Sosa acted as the applicant’s direct supervisor, she would still be responsible as the employer of the applicant to the extent the applicant’s services were performed as an employee for the benefit of a business she assertedly co-owned, namely, Sosa Sister’s Designs.

Similarly to her live-in partner, Ms. Gomez’s main strategy to disavow employment of the applicant appears to have been to remove herself from any responsibility for the business she “lent her name to” and “owned.” (MOH, 1/7/25, p. 4.) Mr. Sosa likewise described his “wife,” (actually his live-in partner) as the company’s sole owner. (Exh. X, p. 13.) It is noted, of course, that Ms. Gomez’s name appears on several of the checks from Balthazar as payee along with Sosa Sister’s. Likewise, Ms. Gomez, according to Mr. Sosa, was listed

as registered owner both of the Sosa Sister's vehicles involved in the fateful caravan along Interstate 5 to San Francisco. (Exh. X, p. 52.)

Ms. Gomez admitted she was responsible for signing all of the checks that went out but would have us believe that all this was done in an automaton-like fashion at the behest of her domestic partner, Mr. Sosa. She also admitted to profit participation, consisting of being allowed by Mr. Sosa to "go and get whatever she needed from the account." She admitted she was involved in sewing fabric for events, which was a primary part of the business, but claimed she did this simply as an employee rather than as a supervisor or owner. (See generally, 1/7/25 MOH, pp. 4-6.)

As with Mr. Sosa, any documentation one would expect of Ms. Gomez as an alleged employee of Sosa Sister's, such as a W-2 or 1099 form in her name, was missing from the record.

Also, much of Ms. Gomez' testimony was not found credible by this judge. She asserted that she "never looked at pay records" for Sosa Sisters. (MOH, 1/7/25, p. 4.) This was contradicted by the credible testimony of third-party bookkeeper Fatima Palacios that she regularly processed 1099 forms for individuals such as Mr. Estacuy through "Ms. Sosa," aka Livier Gomez. (MOH, 3/24/26, pp. 3-4.)

Ms. Gomez's assertions that she was a mere figurehead were contradicted at trial by her own daughter, Nataly Orellana, who described Ms. Gomez in an unqualified fashion as the owner of Sosa Sister's. Ms. Orellana also testified that sewing was a substantial part of the applicant's duties, and that this sewing work "was only done at the direction of the witness, her mother [Livier Gomez] or her dad." (MOH 4/23/24 pp.7, 9.) Ms. Orellana further testified that sewing "is the main focus" of Sosa Sister's' business and that the applicant was hired "mainly to sew and install." (*Ibid.*) [Bold added by PWCJ Robert Rassp].

Ultimately, the question of ownership or control of a business ultimately comes down to the actual working relationship of the claimed owner. Still, as a judge, I am entitled to draw reasonable inferences from the existing evidence. As the named owner for the checking account, vehicle registration and any other aspects of the business to which Ms. Gomez's name was "lent," it is reasonable she had ultimate responsibility for balancing the checkbook, making sure vendors received the checks, making sure that deposits went back into account, that the vehicle registration and any required insurance was maintained, etc. As with Mr. Sosa, it strains credulity that Ms. Gomez took on these roles along with substantial sewing chores out of the goodness of her heart or out of a sense of duty to a gentleman to whom she was not married. The fact that her profit sharing, per her testimony, was done in a haphazard way does not change the fact that her compensation was basically in the form of drawing off profits rather than through invoiced services or paychecks.

Therefore, I believe a preponderance of evidence demonstrates that Ms. Gomez was, along with Mr. Sosa, a co-owner of the enterprise known as Sosa Sister's Designs, making her responsible for injuries incurred by the employees of that business.

As noted above, it is abundantly clear that the applicant's driving duties were simply part of the panoply of services he was expected to provide in connection with his longstanding working relationship with Sosa Sister's. As to whether these services were as an employee rather than an independent contractor, the same *Borello* factors apply.

Viewing applicant's services for Sosa Sister's as a whole, it is quite clear under *Borello* that these were done as an employee rather than as an independent contractor. Some of the reasons for this are discussed above with regard to Mr. Sosa's employment of the applicant. I further note that the applicant was actually characterized as an employee both in the nondisclosure agreement he signed and at least at one point in Mr. Sosa's testimony. The decedent functioned essentially as a "jack of all trades" at the company's behest, including duties of sewing, driving and installing, rather than being retained for one specific professional skill. All these activities were an integral part of Sosa Sister's business. According to Mr. Sosa's deposition testimony, the decedent was paid hourly at the rate of \$17 per hour. (Exh. X, p 60.) According to Ms. Orellana, the decedent supplied none of his tools or equipment. (MOH, 4/23/24, p. 11.) Unlike Ms. Gomez, who could draw money from the business account as needed, there is no indication of any profit participation on Mr. Estacuy's part.

I agree that an ability to sew large quantities of material strikes me as a skill not widely found among the working population. However, if the possession of a skill by itself made an individual an independent contractor, that would make every doctor, lawyer, electrician, plumber, teacher, or other such skilled individual an independent contractor regardless of the overall relationship with the asserted employer. It clearly takes more than possession of a skill to dispute the presumption of employment.

There was also hearsay testimony that the applicant had mentioned working for other companies besides Sosa Sister's, which would be unsurprising as the Sosa Sister's work was basically conducted from project to project. Likewise, to the extent I give any weight to this uncorroborated hearsay, second employment or dual employment with other businesses does not overcome the presumption of employment or the multiple other *Borello* factors supporting the applicant's status of an employee of Ms. Gomez and her company, Sosa Sister's Designs, at the time of the applicant's fatal injury.

As to trial Judge Dobrin's findings of fact and conclusions of law concerning whether or not the decedent was an employee or independent contractor of R. Jack Baltazar, Inc, Judge Dobrin found that this entity was a special employer of the Applicant:

While the applicant's relationship with Balthazar may be somewhat more factually complex than with the two Sosa Sister's owners, I have little more difficulty than with the individuals discussed above in finding this corporation to be a concurrent employer at the time and place of his fatal injury.

This is for two reasons. First, I believed Balthazar functioned essentially as a "special employer" of the applicant, using Sosa Sister's as a de facto staffing agency or "general employer." Second, that application of the traditional *Borello* factors leads this judge to the same outcome. I will discuss each of these reasons in sequence.

As noted above, the underlying facts, in my view, are reasonably straightforward. Very shortly before the San Francisco event itself, Balthazar found that it was in unexpected need of an additional driver to get all its materials up to the San Francisco event. They could, of course, have gone to an uninsured staffing agency and paid that agency some specified sum to hire and pay the driver for the Balthazar event. In that instance, I believe there would be little or no disagreement that Balthazar would then be a special employer, responsible, along with the staffing agency general employer, for any injuries incurred by that employee in the course of their driving duties.

I see little practical difference between that hypothetical scenario and what occurred in this case. Instead of going to a staffing agency, Balthazar placed this recruitment and hiring task on Mr. Sosa and Sosa Sister's Design who was to pay the applicant out of money that Balthazar in turn paid to Sosa Sister's for this and other services. The fact that this compensation was bundled with other compensation for the San Francisco event does not strike me as consequential, as, with a staffing agency situation, the money paid to the agency is typically not the same as the money the agency pays directly to the worker.

While Sosa Sister's did not demand a pay increase in return for providing this extra worker, it appears that Balthazar was essentially trading off its status as a valued client to get a deep discount for this extra service. By analogy, compensation consisting of the promise of more lucrative future compensation, together with modest remuneration for otherwise an otherwise unpaid internship, was deemed to support an intern's employment relationship in *Orberg v. Inter Sources*, 2023 Cal. Wrk. Comp. P.D. LEXIS 111.) Also, Balthazar not only allowed the applicant to park his car gratis at the Balthazar facility for several days (3/24/26 MOH, p. 10), Balthazar directly paid the cost of applicant's lodging in the San Francisco area.

Typically, in a staffing agency case both the agency and the site employer exert some degree of direction and control. The agency is responsible for ensuring the employee's qualifications, and also typically gets involved in any performance issues that arise.

In the present matter, Mr. Sosa, on behalf of "general employer" Sosa Sister's, did drive in a separate truck as part of a 3-vehicle caravan to San Francisco, one driven by the applicant.

However, the evidence shows this was not done mainly to supervise the applicant but simply so that all the materials promised to be transported would arrive at the same place at the same time. Any Sosa Sister's supervision was limited to making sure the applicant kept a logbook and took legally required breaks.

An employment relationship has been found in a number of similar situations where the worker was rendering service for two different entities. In the above-cited *Ali* case, 2014 Cal. Wrk. Comp. P.D. LEXIS 205, applicant was found to be employed by defendant Trimac Transportation even though Trimac hired the applicant through a separate truck leasing company rather than as a direct hire.

In a matter that is somewhat similar to the present case, *Seyfried v. Compass Films*, 2009 Cal. Wrk. Comp. P.D. LEXIS 396, applicant was working on a film shoot run by Compass Production. The applicant herself assisted with catering and was paid for this by a separate company, Power Payroll. However, as the film shoot wound down, a Compass Production manager handed both the applicant and the applicant's Power Payroll supervisor a \$50 bill and asked them to jointly assist in driving a Compass van back to Los Angeles in addition to the vehicle they were already taking back on their own. Even though the applicant was injured in her personal vehicle rather than the Compass van, she was found to be a Compass employee at the time of injury. In so holding, the panel noted:

"Where an employer sends an employee to do work for another person, and both have the right to exercise certain powers of control over the employee, that employee may be held to have two employers—his original or 'general' employer and a second, the 'special' employer." (*Miller v. Long Beach Oil Development* (1959 Ct. of Appeal) 24 CCC 77.)

In the present matter, I see little practical difference between a Balthazar employee handing money directly to the applicant and, instead, handling the matter through lump sum compensation of the "general employer for bundled services.

Likewise, in *Ambriz v. Ideal Catering*, 2008 Cal. Wrk. Comp. P.D. LEXIS 855, joint employment of a catering cook was found by both the catering truck owner and the driver/operator/lessee of the truck, even though the driver was hired, paid and directly supervised by the driver/lessee of the truck. The Board panel relied in part on the unskilled nature of the applicant's work, the fact that the work was integral to the truck owner/lessor's business and that the company that owned the truck dictated the route stops. (See also *Garcia v. G&C Food Enterprises*, 2020 Cal. Wrk. Comp. P.D. LEXIS 129 [joint employment found as between cleaning company that directly hired the applicant and restaurant where applicant performed cleaning services]; [*Gonzalez v. Major Transportation Services*, 2023 Cal. Wrk. Comp. P.D. LEXIS 98 [shared supervision of employee both by agency normally paying the employee and trucking company who received the applicant driver's services led to a finding of dual employment by both companies]; *Castillo v. BaronHR*, 2022 Cal. Wrk. Comp. P.D. LEXIS 61 [dual employment found as between warehouse site employer and staffing agency that retained control over

payroll and discipline; fact that paperwork described applicant as staffing agency's employee was not determinative]; *Faturechi v. Capps*, 2018 Cal. Wrk. Comp. P.D. LEXIS 501 [joint employment found as between casino and card broker hired and paid through an independent third party where casino provided the applicant's place of employment and the applicant's unskilled work was integral to the casino's business].]

In *Calderon v. United Protective Services*, 2024 Cal. Wrk. Comp. PD LEXIS 175, a security guard who regularly patrolled CVS stores was found to be the employee of both the security company that directly hired him and the CVS pharmacy. The Board panel relied in part on the benefit CVS received from the applicant's services, and the fact that his services were integral to CVS's retail business and loss protection program. In the present matter, Balthazar co-executive Rene De La Cueva acknowledged that transportation was an integral part of their business, stating that, with regard to the San Francisco event and presumably for other events, "Everything that is manufactured for the project needed to be transported to the project." (Exh. 44, p. 108.) Also, in the present matter, Balthazar exercised significant control over the applicant by directing the exact vehicle to be driven, the exact destination both coming and going, and the exact times that the materials were expected to be delivered and returned.

What is particularly striking to this judge is the amount of care and control normally asserted by Balthazar over its own drivers, particularly those handling Balthazar's own vehicles, and the manner in which these duties were handed off to the applicant with no semblance of the same procedures.

Balthazar co-executive Nicki Delacueva provided extensive testimony regarding the policies covering their own driver/employees, including refueling requirements, cleaning the vehicles, washing the vehicles, tracking keys, vehicle inspection, DMV record checks with automatic updates for driver violations, carrying emergency kits, monitoring the vehicle for scheduled maintenance, etc. (Exh. 43, pp. 37-38, 56-57.) Likewise, Balthazar's employee manual (Exh. 42, Exh. 7 attached thereto, p. 17.) set forth detailed rules regarding employee drivers regarding their driving record, cell phone use, reporting of accidents, cleaning the vehicle, refueling the vehicle at ¼ tank, locking the vehicle and reporting citations.

It strikes me as incongruous that Balthazar should be relieved of the burden of enforcing these rules and policies, designed to protect not only the employees but also the driving public, simply because of a last-minute decision to hire a third party to drive the vehicle in question. While I understand the circumstances under which this occurred, I do not think it would serve substantial justice to reward and incentive these actions by allowing them to avoid any liability for injuries that would clearly be theirs had they used their own properly supervised employee drivers.

It is also notable that according to the other co-owner, Rene Delacueva, profit and loss considerations played a role in order to decide whether to shave expenses by hiring outside

drivers to assist with the company's fundamental transportation duties. (Exh. 44, pp. 74-79.) It would likewise not serve the Board's goal of protecting injured workers by encouraging this conduct by allowing a company fundamentally involved in transportation services to save costs by outsourcing labor for this to uninsured individuals.

Accordingly, for all of the above reasons, I believe defendant R. Jack Balthazar, Inc. was functioning as a joint employer or special employer of the applicant at the time of his fatal injury.

Employment by R. Jack Balthazar, Inc. based on *Borello* factors:

I come to the same conclusion regarding employment by this company based on the *Borello* factors noted earlier. Unquestionably, the applicant was providing services for Balthazar's benefit as he was driving one Balthazar's equipment-filled trucks to a Balthazar-planned event. So, the question is whether the *Borello* factors showing independent contractor status *outweigh* the presumption of employment that applies in this case.

Many of the factors which led me to find Mr. Sosa to be an employer apply equally to Balthazar. The work was not particularly skilled, as it only required an ordinary California driver's license. It pertained to one of Balthazar's core functions, namely, transporting items and equipment to Balthazar-planned events. Although the applicant may have worked for others as a fabric sewer, there is no suggestion whatsoever that he had or maintained any type of independent truck driving business, or that he participated in any way in the profit or loss earned by Balthazar as a result of his services. Obviously, and tragically, it was Balthazar who provided the tools and equipment, with the exception of a logbook the applicant apparently purchased at a gas station. Furthermore, Balthazar did directly compensate the applicant in the form of free motel accommodations in the pricey San Francisco Bay area. (See 6/20/23 MOH, p. 3, Stipulation No. 5.

Of course, no one from Balthazar sat with him on his truck as he traveled to Northern California. I consider this largely a moot point as the job of driver and deliverer, by its nature, is almost never personally supervised by another person. Balthazar nevertheless specified the exact pickup and destination locations, the time of delivery, and the time of the return trip for which Balthazar directed applicant to remain in San Francisco several days for this purpose.

In deciding whether the parties believed they created an employee relationship, I believe we need to look not only at the sua sponte actions of Balthazar employee Potthoff in making an unexpected decision to hire a second Sosa driver due to changed circumstances, but also Balthazar's general practice regarding those who drove their vehicles. Balthazar's general policy was to closely monitor their employee drivers regarding maintenance, safety, and other concerns. Regardless of the actions of a single Balthazar employee herein in hiring a driver without verifying their driving record, insurance, or a host of other matters, I believe the corporation's overall policy supports an employment relationship for this type of work rather than the anomalous situation presented herein.

I agree that, while the applicant had had a fairly long history of working on Balthazar events as a Sosa Sister's employee, his single stint of service as a Balthazar driver was basically a "one off" assignment unsuggestive of a permanent relationship. Also, Balthazar compensated the applicant as part of a single payment to Sosa Sister's (as well as through free lodging) rather than via an hourly wage. However, in looking at the totality of circumstances, I do not believe that those *Borello* factors favoring independent contractor status outweigh those favoring the applicant's status as a Balthazar employee at the time of his fatal injury.

Judge Dobrin closed his Opinion on Decision indicating that the issue of attorney's fees is deferred once indemnity is awarded in this case if entitlement to total or partial dependency and burial expenses are determined for the Applicant's widow and stepchildren.

III. DISCUSSION BY PRESIDING JUDGE

As the trial judge in this matter, Judge Dobrin made specific determinations of the credibility of the defense witnesses in this case. The Appeals Board and appellate courts will afford great deference to a trial judge's assessment of the relative credibility of witnesses, including that of the injured worker. A judge's findings on credibility are entitled to great weight by the Appeals Board and appellate justices: "because of the [judge's] opportunity to observe the demeanor of the witnesses and weigh their statements in connection with their manner on the stand." (*Garza v. Workers' Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 319; 90 Cal. Rptr. 355, 475 P.2d 451, 35 Cal. Comp. Cases 500, 505.). The Appeals Board is still citing *Garza* from the 1970 decision up to and including in their 2026 decisions.

Judge Dobrin relied on the live testimony of witnesses and the deposition transcripts that were admitted into evidence. He was not required to make any mention of specific exhibits in the record that either provided irrelevant evidence or were not probative. This case has been pending since 2017 with three trial judges involved. Judge Dobrin relied on deposition testimony from depositions that were admitted into evidence. Despite having three trial judges involved in this case, the parties waived Labor Code Section 5700 and Judge Dobrin was able to review all exhibits that were admitted into evidence during his own trial proceedings and those from the prior two trials that were not completed. Defense counsel fails to cite specific evidence in the current record or in prior deposition testimony that is probative as to whether the decedent was an independent contractor or an employee of Balthazar. Judge Dobrin indicated in his decision that the record was

complete enough to make a just and fair decision based on the evidence that had been admitted into evidence during prior trial proceedings and during his own.

The Appeals Board panels give a significant amount of deference to trial judge's determination of the credibility of witnesses and will overrule the trial judge only if the judge's finding of credibility is not supported by the record. One tenant applicable in civil and criminal cases is also applicable during WCAB trial proceedings: if the trial judge believes a witness is lying about one fact, the judge can disregard their entire testimony unless their perjured testimony is somehow rehabilitated during redirect examination. Judge Dobrin properly and thoroughly made specific findings of the credibility of the alleged employer witnesses who testified at trial in this matter. Judge Dobrin's factual conclusions are based on the weight of the documentary and witness testimony since the Applicant is deceased and his widow and stepchildren were not percipient witnesses to the financial relationships the decedent had with these individuals and entities.

Labor Code section 3357 states: "Any person rendering service for another, other than as an independent contractor, or unless expressly excluded herein, is presumed to be an employee." Once employment is legally established, the burden of proof shifts to the hirer to rebut the presumption by proving by a preponderance of the evidence that the worker is an independent contractor. In addition, Labor Code Section 2750 defines an "employment contract" as "a contract by which one, who is called the employer, engages another, who is called the employee, to do something for the benefit of the employer or a third person."

A contract of employment can be created by oral or written agreement, by statute, or by behavior. Offer, acceptance, and consideration are the requisite elements of a contract. In the context of an employment contract, the analysis begins with Labor Code section 3357 as stated above, which states: "Any person rendering service for another, other than as an independent contractor, or unless expressly excluded herein, is presumed to be an employee." Contrast that language with Labor Code section 3353: "Independent contractor means any person who renders service for a specified recompense for a specified result, under the control of his principal as to the result of his work only and not as to the means by which such result is accomplished." Both opposites must be teased apart under the triad of offer, acceptance, and consideration and then the separate analysis of whether the agreement constitutes an independent contractor relationship between the parties or one in which the worker is an employee of the hirer. In most circumstances, including in the case at bar, the *Borello* factors apply to determine the existence of an employment

relationship. If an employment relationship exists, the hirer is liable for workers' compensation benefits to an injured worker. That is exactly what trial judge Dobrin did in his analysis of this case.

This case falls under the factual setting that requires not only the presumption of employment, which has not been rebutted by the individuals and entities involved, but also a general special employment agreement between Sosa Sister's Design (and the individuals who own it – Mr. Nelson Sosa and Ms. Livier Gomez) and R. Jack Balthazar, Inc. which entity was the “party planner” at the San Francisco venue. Labor Code Section 3602(d)(1) states:

“For the purposes of this division, including Sections 3700 and 3706, an employer may secure the payment of compensation on employees provided to it by agreement by another employer by entering into a valid and enforceable agreement with that other employer under which the other employer agrees to obtain, and has, in fact, obtained workers' compensation coverage for those employees. In those cases, both employers shall be considered to have secured the payment of compensation within the meaning of this section and Sections 3700 and 3706 if there is a valid and enforceable agreement between the employers to obtain that coverage, and that coverage, as specified in subdivision (a) or (b) of Section 3700, has been in fact obtained, and the coverage remains in effect for the duration of the employment providing legally sufficient coverage to the employee or employees who form the subject matter of the coverage. That agreement shall not be made for the purpose of avoiding an employer's appropriate experience rating as defined in subdivision (c) of Section 11730 of the Insurance Code.”

Factually, the customer in San Francisco who was having an event at its venue paid Balthazar \$3,000.00 to use the Balthazar's truck which in the mind of this Presiding Judge is evidence that there was a joint venture between Sosa Designs and Balthazar for the Applicant to transport the materials to the San Francisco venue (which was Balthazar's agreement with the customer), and for the Applicant decedent to set up the venue with the materials he was supposed to transport for the event. It appears from Judge Dobrin's findings that both companies jointly were responsible for transporting the materials for the event in San Francisco and to perform the actual set up of the drapery and fabric items at the venue destination. Since the unrebutted evidence shows that Sosa Designs paid the Applicant \$17.00 per hour and money was exchanged between

the customer and Balthazar, Inc. for the Applicant to transport the fabric and drapery to the venue, both companies coordinated and controlled the Applicant's actions. Under Labor Code Section 3602(d)(1), Sosa was the general employer since it historically paid the Applicant \$17.00 per hour to install fabric and drapery at high-end events, while Balthazar was a special employer who contracted the Applicant to transport the materials to San Francisco. Balthazar had control over getting the material to the venue from Southern California while Sosa Sister's Design had control over the installation of the fabric and drapery at the venue.

Defense counsel alleges in his within Petition for Reconsideration that Sosa Designs included as part of their "essential business function" was to transport drapery and fabric to party venues. That fact, as accepted from the record, does not mitigate or reduce the joint venture relationship between Sosa Design and Balthazar to transport the fabric, drapery, audio equipment and other items that were necessary to successfully prepare for the event in San Francisco by both companies.

The record shows that the Applicant was not required to possess a commercial truck driver's license in order to use the Balthazar's truck. As indicated by Judge Dobrin in his factual finding, that fact alone fails to establish an independent contractor relationship between the Applicant and Balthazar, Inc. Both companies exercised control over the Applicant's intended work in this arrangement. Balthazar controlled the Applicant transporting the material to San Francisco while Sosa Sisters Designs controlled the installation of the drapery and fabric once he would have arrived at the venue in San Francisco. Defendants Sosa Sisters Design (which includes the individuals and the company itself) and Balthazar, Inc. equally controlled the Applicant's activities once the Balthazar truck was used for this joint venture between Sosa Designs and Balthazar.

The WCJ Dobrin's MOH/SOE dated March 24, 2026 consists mostly the testimony of witness Tara Potthoff, the "operations manager" for Balthazar. It is clear from her testimony that both Sosa Designs and Balthazar jointly transported the materials to San Francisco utilizing trucks from both companies. Her statement that no one from Balthazar supervised the decedent is not credible based on the actual events that occurred during the preparation for the event and trip to San Francisco. It is clear from a review of the record that both companies "supervised the crew" of people whose job was to transport the drapery, fabric, sound equipment and other goods to the San Francisco venue. Sosa Designs played fast and loose by not treating the decedent as an

employee in the first place despite the amount of control Sosa Designs exercised over them. The same is true for the management of Balthazar – they directed the decedent in determining which truck to use and who was driving it to San Francisco. The record shows that both Nelson Sosa and management from Balthazar chose the Applicant to drive the Isuzu truck to San Francisco on that fateful day.

IV. CONCLUSION

Judge Dobrin’s factual findings and conclusions of law are supported by the entire record and the Workers’ Compensation Appeals Board should deny Defendant Balthazar’s within Petition for Reconsideration. Additionally, the pending Petition To Stay Proceedings should be denied or upon remand of the case back to this Court, this Presiding Judge may be granted leave by the Appeals Board to deny said Petition.

Dated: June 1, 2026

ROBERT G. RASSP
PRESIDING WORKERS’ COMPENSATION JUDGE